

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

FREDREKA M. BOYKIN,	)	CASE NO: 1:17-CV-235
	)	
Plaintiff,	)	JUDGE SOLOMON OLIVER
	)	
v.	)	MAGISTRATE JUDGE
	)	JONATHAN D. GREENBERG
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	<b>Report &amp; Recommendation</b>
	)	

Plaintiff, Fredreka M. Boykin (“Plaintiff”), challenges the final decision of Defendant, Nancy A. Berryhill, Acting Commissioner of Social Security (“Commissioner”), denying her application for Disability Insurance Benefits (“DIB”) under the Social Security Act, 42 U.S.C. §§ 416(i) & 423. (“Act”). This Court has jurisdiction pursuant to 42 U.S.C. § 405(g). This case is before the undersigned United States Magistrate Judge pursuant to an automatic referral under Local Rule 72.2 for a Report and Recommendation. For the reasons set forth below, it is recommended that this action be DISMISSED WITHOUT PREJUDICE for failure to prosecute based on Plaintiff’s failure to pay the filing fee.

**I Relevant Background**

On February 6, 2017, Plaintiff, through counsel, filed a Complaint challenging the final decision of the Commissioner denying her application for DIB. (Doc. No. 2.) A motion to

proceed *in forma pauperis* (“IFP”) accompanied Plaintiff’s Complaint. (Doc. No. 1.)

On February 8, 2017, the undersigned issued a Report & Recommendation that Plaintiff’s Motion for Leave to Proceed IFP be denied because she reported earning \$490.00 more dollars per month in gross income than she paid in expenses and, thus, it did not appear that the cost of filing would impose an undue hardship. (Doc. No. 4.) The Report & Recommendation further provided that “[s]hould the Court issue an Order adopting this Report & Recommendation, it is further recommended that Plaintiff be ordered to pay the \$400 filing fee within fourteen (14) days of such Order.” (*Id.* at 4.) The record reflects Plaintiff did not file objections to the Report & Recommendation.

On March 16, 2017, the Court issued an Order adopting the undersigned’s Report & Recommendation and ordering Plaintiff “to pay the \$400 filing fee within 14 days of the date of this Order,” i.e., by March 30, 2017. (Doc. No. 5.)

The record reflects Plaintiff has failed to pay the \$400 filing fee as required by this Court’s March 16, 2017 Order. It is therefore recommended that this matter be dismissed without prejudice for failure to prosecute based on Plaintiff’s failure to pay the filing fee. *See Bomer v. Lavigne*, 76 Fed. Appx. 660 (6<sup>th</sup> Cir. 2003) (affirming dismissal of complaint without prejudice for failure to want of prosecution based on plaintiff’s failure to pay filing fee); *Davis v. U.S.*, 2003 WL 21956990 (6<sup>th</sup> Cir. Aug. 13, 2003); *Martin v. Bureau of Medical Services*, 2016 WL 4140557 (S.D. Ohio Aug. 4, 2016).

## **II. Conclusion**

For the reasons set forth above, it is therefore recommended that this matter be dismissed without prejudice for failure to prosecute based on Plaintiff’s failure to pay the filing fee.

Date: May 4, 2017

s/ Jonathan D. Greenberg  
Jonathan D. Greenberg  
U.S. Magistrate Judge

### **OBJECTIONS**

**Any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days after the party objecting has been served with a copy of this Report and Recommendation. 28 U.S.C. § 636(b)(1). Failure to file objections within the specified time may waive the right to appeal the District Court's order. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).**